

(1) IN GENERAL.—Not later than one year after the date of the enactment of this Act, each Secretary concerned shall submit to the appropriate congressional committees a report on preparation of that Secretary to implement section 1561 of title 10, United States Code, as amended by subsection (a).

(2) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term “appropriate congressional committees” means—

(A) the Committee on Armed Services of the Senate; and

(B) the Committee on Armed Services of the House of Representatives.

**SA 3968.** Ms. HIRONO submitted an amendment intended to be proposed to amendment SA 3867 submitted by Mr. REED and intended to be proposed to the bill H.R. 4350, to authorize appropriations for fiscal year 2022 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle C of title V, add the following:

**SEC. 530C. PETITION FOR DNA TESTING UNDER THE UNIFORM CODE OF MILITARY JUSTICE.**

(a) IN GENERAL.—Subchapter IX of chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), is amended by inserting after section 873 (article 73) the following new section:

**“§ 873a. Art 73a. Petition for DNA testing**

“(a) IN GENERAL.—Upon a written petition by an accused sentenced to imprisonment or death pursuant to a conviction under this chapter (referred to in this section as the ‘applicant’), the Judge Advocate General shall order DNA testing of specific evidence if the Judge Advocate General finds that all of the following apply:

“(1) The applicant asserts, under penalty of perjury, that the applicant is actually innocent of the offense for which the applicant is sentenced to imprisonment or death.

“(2) The specific evidence to be tested was secured in relation to the investigation or prosecution of the offense referenced in the applicant’s assertion under paragraph (1).

“(3) The specific evidence to be tested—

“(A) was not previously subjected to DNA testing and the applicant did not knowingly fail to request DNA testing of that evidence in a prior motion for postconviction DNA testing; or

“(B) was previously subjected to DNA testing and the applicant is requesting DNA testing using a new method or technology that is substantially more probative than the prior DNA testing.

“(4) The specific evidence to be tested is in the possession of the Government and has been subject to a chain of custody and retained under conditions sufficient to ensure that such evidence has not been substituted, contaminated, tampered with, replaced, or altered in any respect material to the proposed DNA testing.

“(5) The proposed DNA testing is reasonable in scope, uses scientifically sound methods, and is consistent with accepted forensic practices.

“(6) The applicant identifies a theory of defense that—

“(A) is not inconsistent with an affirmative defense presented at trial; and

“(B) would establish the actual innocence of the applicant of the offense referenced in

the applicant’s assertion under paragraph (1).

“(7) If the applicant was convicted following a trial, the identity of the perpetrator was at issue in the trial.

“(8) The proposed DNA testing of the specific evidence may produce new material evidence that would—

“(A) support the theory of defense referenced in paragraph (6); and

“(B) raise a reasonable probability that the applicant did not commit the offense.

“(9) The applicant certifies that the applicant will provide a DNA sample for purposes of comparison.

“(10) The petition is made in a timely fashion, subject to the following conditions:

“(A) There shall be a rebuttable presumption of timeliness if the petition is made within five years of the date of the enactment of the National Defense Authorization Act for Fiscal Year 2022 or within three years after the date of the entry of judgment under section 860c of this title (article 60c), whichever comes later. Such presumption may be rebutted upon a showing—

“(i) that the applicant’s petition for a DNA test is based solely upon information used in a previously denied motion; or

“(ii) of clear and convincing evidence that the applicant’s filing is done solely to cause delay or harass.

“(B) There shall be a rebuttable presumption against timeliness for any petition not satisfying subparagraph (A). Such presumption may be rebutted upon the Judge Advocate General’s finding—

“(i) that the applicant was or is incompetent and such incompetence substantially contributed to the delay in the applicant’s motion for a DNA test;

“(ii) the evidence to be tested is newly discovered DNA evidence;

“(iii) that the applicant’s petition is not based solely upon the applicant’s own assertion of innocence and, after considering all relevant facts and circumstances surrounding the petition, a denial would result in a manifest injustice; or

“(iv) upon good cause shown.

“(C) For purposes of this paragraph—

“(i) the term ‘incompetence’ has the meaning given that term in section 876b of this chapter (article 76b); and

“(ii) the term ‘manifest’ means that which is unmistakable, clear, plain, or indisputable and requires that the opposite conclusion be clearly evident.

“(b) APPEAL OF DENIAL.—The applicant may appeal the Judge Advocate General’s denial of the petition of DNA testing to the Court of Appeals for the Armed Forces.

“(c) EVIDENCE INVENTORY; PRESERVATION ORDER; APPOINTMENT OF COUNSEL.—

“(1) INVENTORY.—The Judge Advocate General shall order the preparation of an inventory of the evidence related to the case for which a petition is made under subsection (a), which shall be provided to the applicant.

“(2) PRESERVATION ORDER.—To the extent necessary to carry out proceedings under this section, the Judge Advocate General shall direct the preservation of the specific evidence relating to a petition under subsection (a).

“(3) APPOINTMENT OF COUNSEL.—The applicant shall be eligible for representation by appellate defense counsel under section 870 of this chapter (article 70).

“(d) TESTING COSTS.—The costs of any DNA testing ordered under this section shall be paid by the Government.

“(e) TIME LIMITATION IN CAPITAL CASES.—In any case in which the applicant is sentenced to death—

“(1) any DNA testing ordered under this section shall be completed not later than 60

days after the date on which the test is ordered by the Judge Advocate General; and

“(2) not later than 120 days after the date on which the DNA testing ordered under this section is completed, the Judge Advocate General shall order any post-testing procedures under subsection (f) or (g), as appropriate.

“(f) DISCLOSURE OF TEST RESULTS.—Reporting of test results shall be simultaneously disclosed to the Government and the applicant.

“(g) POST-TESTING PROCEDURES; INCONCLUSIVE AND INCULPATORY RESULTS.—

“(1) INCONCLUSIVE RESULTS.—If DNA test results obtained under this section are inconclusive, the Judge Advocate General may order further testing, if appropriate, or may deny the applicant relief.

“(2) INCULPATORY RESULTS.—If DNA test results obtained under this section show that the applicant was the source of the DNA evidence, the Judge Advocate General shall—

“(A) deny the applicant relief; and

“(B) if the DNA test results relate to a State offense, forward the finding to any appropriate State official.

“(h) POST-TESTING PROCEDURES; MOTION FOR NEW TRIAL OR RESENTENCING.—

“(1) IN GENERAL.—Notwithstanding any provision of law that would bar a motion under this paragraph as untimely, if DNA test results obtained under this section exclude the applicant as the source of the DNA evidence, the applicant may file a petition for a new trial or resentencing, as appropriate.

“(2) STANDARD FOR GRANTING MOTION FOR NEW TRIAL OR RESENTENCING.—The applicant’s petition for a new trial or resentencing, as appropriate, shall be granted if the DNA test results, when considered with all other evidence in the case (regardless of whether such evidence was introduced at trial), establish by compelling evidence that a new trial would result in the acquittal of the applicant.

“(i) RELATIONSHIP TO OTHER LAWS.—

“(1) POST-CONVICTION RELIEF.—Nothing in this section shall affect the circumstances under which a person may obtain DNA testing or post-conviction relief under any other provision of law.

“(2) HABEAS CORPUS.—Nothing in this section shall provide a basis for relief in any Federal habeas corpus proceeding.”

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such subchapter is amended by inserting after the item relating to section 873 (article 73) the following new item:

“873a. Art 73a. Petition for DNA testing.”

**SA 3969.** Ms. HIRONO submitted an amendment intended to be proposed to amendment SA 3867 submitted by Mr. REED and intended to be proposed to the bill H.R. 4350, to authorize appropriations for fiscal year 2022 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle D of title XXVIII, add the following:

**SEC. 2836. FIVE-YEAR UPDATES OF HAWAII MILITARY LAND USE MASTER PLAN.**

(a) SENSE OF CONGRESS.—Given the extent and significance of the presence of the Armed Forces and the Department of Defense in Hawai‘i and the limited geography of the State, it is the sense of Congress that the Secretary of Defense should do the following: